

### REMARKS/ARGUMENTS

This amendment is in response to the Office action dated July 19, 2010. Claims 13-24 are pending in this application. Claims 13, 21 and 22 are cancelled. Claims 13, 14, 20, and 23, are amended and new claim 24 has been added.

The amendments to claims 13, 14, 20 and 23 accommodate the cancellation of claim 12.

Support for newly added claim 24 can be found throughout the specification including the originally filed claims, paragraphs [00034] – [00048], and [00052] – [00063] and Figs. 1 – 4, and 8 – 12.

### **Summary of Examiner Interview**

Applicant wishes to thank Examiner Bachman for extending the courtesy of an interview on November 8, 2010. During the interview, a proposed amendment was discussed as was U.S. Patent 4,694,781 to Howe et al. Examiner Bachman suggested clarifying proposed claim 24 by adding the language “from the absorbent material through” and indicated that claim 24 would overcome the rejections in view of the Howe patent. Examiner Bachman also indicated that proposed claims 25 – 29 would likely be subject to a restriction requirement. In light of Examiner Bachman’s comments, Applicant submits the above amendments, which is the proposed amendment modified to add the suggested language to claim 24 and to cancel claims 25 – 29.

### **Summary of the Office action**

The Office action dated July 19, 2010 includes the following rejections:

- claims 21 and 22 were rejected under 35 U.S.C. § 112 for failing to comply with the written description requirement;
- claims 12 – 19 and 23 were rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent 4,694,781 to Howe et al. (the Howe et al. patent);

- claim 20 was rejected under 35 U.S.C. § 103 as being obvious in view of the combination of the Howe et al. patent and U.S. Patent 6,509,187 to Brem; and
- claims 21 and 22 were rejected under 35 U.S.C. § 103 as being obvious in view of the Howe et al. patent.

#### Rejection of claims 21 and 22 under 35 U.S.C. § 112

Claims 21 and 22 were rejected under 35 U.S.C. § 112 for lack of written description. Applicant respectfully disagrees, however, Applicant has elected to cancel claims 21 and 22 in order to advance the prosecution of the above referenced application.

#### Independent claim 24

In responding to Applicant's arguments filed 4 June 2010, the Office action noted that "[a] recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art" (Office action, p. 3). In view of the above comment, Applicant cancelled independent claim 12 and submits new independent claim 24 to clarify the structural differences between the claimed ear tag and the prior art of record. Claim 24 is as follows:

24 An ear tag for marking and identifying animals, the ear tag including a male tag component, a female tag component and a sampling device, wherein:

the female tag component has an inner surface and an outer surface and includes a hollow head having an opening at the inner surface;

the sampling device includes an absorbent material, is fixed in a non-permanent manner to the female tag component and is disposed over the opening to the hollow head of the female tag component;

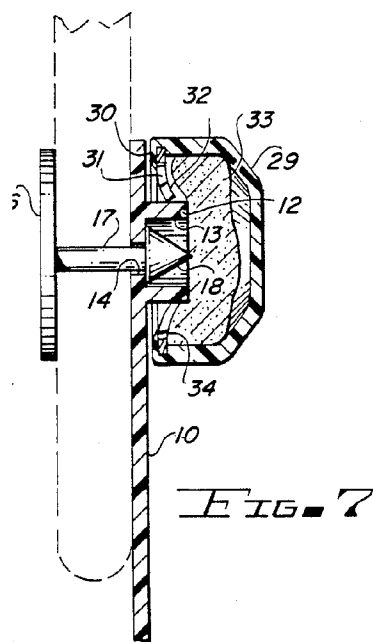
the male tag component includes a punch that is configured to penetrate in a direction of penetration through an animal's ear, the absorbent material and from the absorbent material through the opening into the hollow head of the female tag component under the action of an applicator tool having jaws, to fix the ear tag to the animal's ear, the absorbent material being disposed transverse to the direction of penetration, the sampling device thereby

sampling biological material extracted from the ear of the animal when it is pierced by the punch;

said sampling device is separable from the female tag component; and

the sampling device further includes an attachment configured to fix the sampling device to one of the jaws of the applicator tool such that the sampling device is configured to be separated from the female tag component by said applicator.

Applicant respectfully submits that neither the Howe et al. nor the Brem patent disclose taken alone or in combination disclose claim 24. With specific regard to the Howe et al. patent, Applicant submits that the Howe et al. patent does not disclose that "the sampling device includes an absorbent material, is fixed in a non-permanent manner to the female tag component and is disposed over the opening to the hollow head of the female tag component" or that "the male tag component includes a punch that is configured to penetrate in a direction of penetration through ... the absorbent material and from the absorbent material through the opening into the hollow head of the female tag component ... the absorbent material being disposed transverse to the direction of penetration" (claim 24). Moreover, the Howe et al. patent does not disclose that "the sampling device further includes an attachment configured to fix the sampling device to one of the jaws of the applicator tool" (claim 24). Quite the contrary, the tag structure described in the Howe et al. patent that is relied upon in the rejection of previously pending claim 12 is illustrated in FIG. 7 of the Howe et al. patent:



Applicant respectfully submits that the Howe et al. patent does not disclose that the felt disc or sponge insert shown as 33 in FIG. 7 is “disposed over the opening to the hollow head of the female tag component” through which the punch of the male tag penetrates [claim 24]. In addition, the Howe et al. patent does not disclose that the punch penetrates through the felt disc or sponge insert shown as 33 in FIG. 7 (see generally Howe et al. patent, col. 4, lines 32 – 56). Finally, the Howe et al. patent does not show an “attachment configured to fix the sampling device to one of the jaws of the applicator tool” (claim 24). Accordingly, Applicant respectfully submits that the Howe et al. patent does not anticipate newly submitted claim 24. Furthermore, Applicant submits that these features are not disclosed in the Brem patent. Accordingly, Applicant submits that claim 24 is allowable.

#### Claims 13 – 20, and 23

Claims 13 – 20 and 23 depend from independent claim 24. Applicant respectfully submits that claims 13 – 20 and 23 are allowable for reasons including those outlined above with respect to independent claim 24.

### Conclusion

In view of the foregoing amendments and remarks, it is respectfully submitted that this application is in condition for allowance. Accordingly, reconsideration of the application and allowance of the claims are respectfully requested. Although the present paper may include a combination of alterations to the application or claims, or characterizations of claim scope or referenced art, Applicants are not conceding that previously pending claims in this application are not patentable over the cited references. Rather, any alterations and/or characterizations are made to strictly facilitate prosecution of this application. As such, reviewers of this or any parent, child, or related prosecution history shall not reasonably infer that Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

Applicants have submitted amendments and arguments believed to be sufficient to overcome all of the outstanding rejections. Consequently, Applicants have not advanced every argument for the allowability of the claims over the references of record. As such, Applicants do not acquiesce to any of the Examiner's statements or characterizations not specifically traversed. If the Examiner should have any remaining questions or objections, a telephone interview to discuss and resolve these issues is respectfully requested.

Respectfully submitted,

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